IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

MFA.No. 1057 of 2001()

OP(MV).204/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

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APPELLANTS: PETITIONERS
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1. **SREEDEVI, W/O.LATE K.G.AJAYARAJ, THAVITTUPADINJATTATHIL, KADAVOOR CHERRY, THRIKKADAVOOR VILLAGE, KOLLAM.**

2. **AJEESH RAJ, S/O. LATE K.G.AJAYARAJ, (MINOR), THAVITTUPADINJATTATHIL, KADAVOOR CHERRY, THRIKKADAVOOR VILLAGE, KOLLAM.**

3. **SAJEESH RAJ,, S/O.LATE K.G.AJAYARAJ (MINOR), THAVITTUPADINJATTATHIL, KADAVOOR CHERRY,THRIKKADAVOOR VILLAGE, KOLLAM (APPELLANT 2 & 3 REP.BY IST APPELLANT.)**

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS: RESPONDENTS
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1. **T.A.DASAN, S/O. APPU, THIRUKKULAM HOUSE, PALLIPPURAM DESOM, POYYA VILLAGE, MALA .**

2. **M/S. ORIENTAL INSURANCE COMPANY LTD., KUNNAMKULAM.**

tss

3. B.YESUDAS, S/O. BURNARD, FISHERMEN COLONY NO.2, VADDY, KOLLAM

4. NANDA SITHARAM SAIT, W/O. SITHARAM SAIT, VAISALY JEWELLERS, MAIN ROAD, KOLLAM.

5. M/S. ORIENTAL INSURANCE CO. LTD., KOLLAM.

BY ADV. SRI.MATHEWS JACOB - R2 & R5

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.1057 of 2001

Dated this the 7th day of August, 2007.

JUDGMENT

KOSHY,J.

The husband of the first appellant, at the age of 33 years, met with a serious motor accident on 16.8.1993 and he died, due to the injuries suffered in the accident. A claim petition was filed by the widow of the deceased, along with two minor children, claiming a compensation of Rs.10,70,000/-. The tribunal found that the accident occurred due to the negligence of the driver of the lorry insured by the 2nd respondent insurance company. However, the tribunal awarded only a total compensation of Rs.1,99,700/-. The quantum of compensation is disputed in this appeal.

2. It is the contention of the appellants that the deceased was drawing Rs.3,000/- per month as an Accountant and Auditor and a certificate was also produced to that effect. The tribunal did not accept the same as the

person who issued the certificate was not examined. Apart from the production of S.S.L.C book, the appellants have not produced any other certificate showing that the deceased was having any special educational qualification to work as an Accountant. Any way, he must have been writing accounts in the jewelery shop.

3. Considering the fact that the accident occurred in 1993 and he was maintaining a family (wife and two small children), we fix Rs.1,800/- as his monthly income. If that be so, the loss of dependency can be calculated at Rs.1,200/- per month. The tribunal has taken 17 as the multiplier, taking guidelines from the second schedule. The three member bench in **Smt.Supe Dei & ors v. M/s.National Insurance Company & Anr.** {JT 2002 (Suppl. 1) SC 451} held that Second Schedule of the Motor Vehicles Act, though framed for determining the claim made under Section 163 A, it can also be taken as a guideline while determining the compensation under Section 166 of the Act. Even though it is argued that considering the

present life span, a higher multiplier ought to have been adopted, we are of the view that no enhancement is necessary. According to us, the correct multiplier has been adopted. If that be so, the compensation payable will be:

1200 x 12 x 17 = Rs.2,44,800/-.

The tribunal has awarded Rs.1,63,200/- on account of loss of dependency. The balance amount payable by the insurance company will be Rs.81,600/-.

4. It is argued that the wife was only aged 26 years at the time of accident and there is nobody to look after them and they are helpless. The appellants contend that the compensation awarded on all other counts are very small. But, considering the total compensation awarded, we are not inclined to enhance the compensation on any other count. The additional compensation of Rs.81,600/- should be deposited by the 2nd respondent insurance company with 7.5% interest from the date of application, till the date of deposit. On deposit of the above amount, Rs.25,000/- can be withdrawn by the first appellant widow of the deceased,

and the balance should be deposited equally in the name of the minor children, so as to fetch maximum rate of interest in a Nationalised Bank till they attain majority.

Appeal is allowed to the above extent.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

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//true copy//

J.B.KOSHY & V.GIRI,JJ.

M.F.A.NO.1057 of 2001

JUDGMENT

7th August, 2007.